IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

[Court's order whether the case is approved for reporting or not under Chapter VIII Rule 32 (2) (b)]

Description of the case

Writ Petition No. 1831 (SS) of 2005

Km. Pratibha Sharma .....**Petitioner**

Versus

State of Uttarakhand
and others. .....**Respondents**

Approved for reporting
_____

~~Not approved for reporting~~

Date of Decision : April 10, 2007

Initial of Judge

_____

_____

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 1831 (SS) of 2005

Km. Pratibha Sharma,
D/o late Sri K.D. Sharma,
R/o Marshal Cottage,
Mallital, Nainital
District-Nainital. ……..**Petitioner**

Versus

1 State of Uttarakhand through Secretary, Education
Civil Secretariat, Uttarakhand, Dehradun
2 Director of Education, Uttarakhand, Dehradun.
3 Joint Director of Education, Kumaon Region, Nainital.
……**Respondents**

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rajendra Dobhal, learned counsel for the petitioner and Sri H.M. Raturi, learned Standing Counsel for the respondents.

By means of this writ petition, the petitioner has prayed for the following relief:-

1. *issue a writ order or direction in the nature of Mandamus commanding the respondents authorities to reinstate the petitioner in her services on the post of Assistant Teacher (LT grade) in Home Science in Government Girls Inter College, Paaye Garud, District – Bageshwar.*
2. *pass any other and further orders, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*
3. *award the cost of the writ petition to the petitioner*
4. *issue a writ, order or direction in the nature of certiorari calling for the records and quashing the impugned order*

dated 04.03.2006 (Annexure no. 13 to the writ petition) passed by Director of Education (Schooling) Uttaranchal, Dehradun – respondent no. 2.

The services of the petitioner, who was working as Assistant Teacher (Home Science), were terminated by the respondents. Aggrieved with the order, petitioner filed present writ petition and learned Single Judge of this Hon'ble Court on 09.12.2005 while admitting the writ petition directed the respondents to decide the representation of the petitioner within a period of three weeks from the date of production of certified copy of the order and in compliance of this order Director, School Education, Uttarakhand passed order dated 04.03.2006 rejecting the representation of the petitioner and this order has been annexed by the respondents in the counter affidavit. Thereafter, petitioner moved an amendment application with a prayer to quash the order dated 04.03.2006 and also to add pleadings and grounds in the writ petition, the same was allowed by this court on 20.06.2006.

The facts of the case are that on 17.06.2002 Joint Director, Education, Kumaon Region Nainital issued an advertisement inviting applications for ten posts of Assistant Teacher LT Grade (Home Science). In pursuance of the aforesaid advertisement issued, petitioner applied and after being selected, she was appointed as Assistant Teacher LT Grade (Home Science) vide order dated 07.11.2003 and on 14.11.2003, petitioner submitted her joining in Government Girls Inter College, Paaye Garud, District– Bageshwar.

Writ petition no. 737 (SS) of 2003 (Neeta Lohani Vs. State of Uttaranchal and others) was filed by Neeta Lohani

challenging the selection made in pursuance to the advertisement dated 17.06.2002 on the ground that the selected candidates were having one subject as Home Science in degree level whereas in the Rules known as U.P. Subordinate Education (Trained Graduate) Service Rules 1983, provides that the candidate must have degree in Home Science for being appointed as Assistant Teacher (Home Science)

Counter affidavit has been file by respondents. It was stated by the respondents in the counter affidavit that since enforcement of the Rule, 1983, the candidates having one subject of Home Science in degree level had been considered for appointment as Assistant Teacher (Home Science) and number of candidates, who were having one subject Home Science in degree level, have already been appointed as Assistant Teacher LT Grade by U.P. Public Service Commission and U.P. Subordinate Service Selection Commission and as such, selection made in pursuance to the advertisement is correct.

Learned Single Judge of this court vide judgment and order dated 21.06.2004 allowed the writ petition and respondents were directed to correct the mistake and republish the list of selected candidates as Assistant Teacher LT Grade (Home Science) in pursuance to the advertisement dated 17.06.2002. Petitioner was not party in that writ petition.

In pursuance to the order passed by learned Single Judge on 21.06.2004 in the Writ petition no. 737 (SS) of 2003 (Neeta Lohani Vs. State of Uttaranchal and others) in which petitioner was not the party, respondents terminated the

service of the petitioner vide order dated 05.02.2005. Aggrieved with this order petitioner preferred Writ petition no. 134 (SS) of 2005 challenging the termination order on the ground that no opportunity of hearing was afforded to the petitioner before termination of her service. Learned Single Judge of this court on 16.02.2005 directed the respondents to pass fresh order after affording the opportunity of hearing to the petitioner.

Respondents after giving opportunity of hearing to the petitioner passed fresh order dated 27.02.2005, consequently, writ petition no. 134 (SS) of 2005 was dismissed as infructuous. Petitioner thereafter moved Special Appeal No. 39 of 2005 against order dated 21.06.2004 passed by learned Single Judge in Writ petition no. 737 (SS) of 2003 (Neeta Lohani Vs. State of Uttaranchal and others). Special Appeal was dismissed as withdrawn. Thereafter, petitioner moved review petition No. 19 of 2005 seeking review of the order dated 21.06.2004 passed by learned Single Judge in Writ petition no. 737 (SS) of 2003 (Neeta Lohani Vs. State of Uttarancahl and others) where learned Single Judge has directed the respondents to correct the mistake and republish the list of selected candidates. The review was filed on the ground that petitioner was not party in Writ petition no. 737 (SS) of 2003 (Neeta Lohani Vs. State of Uttaranchal and others). Learned Single Judge on 14.06.2005 allowed the review application after hearing both the parties and reviewed and clarified his judgment and order dated 21.06.2004 to be operative prospectively. Order passed by learned Single Judge in review application is quoted as under:

"1. *This review petition has been filed by the applicants in WPSS No. 737 of 2003 Smt. Neeta Lohni Vs. State & others with the prayer that the order dated 21.06.2004 may be reviewed.*

2. *The grounds taken by the applicants in the review petition are that this Court issued direction to the respondent authorities to correct the mistake in selection of Assistant Teacher (Home Science) in Government Colleges, situated in Kumaon Region of State of Uttaranchal and also republished the list of selected candidates, who have their graduation/degree either in Home Art or Home Science or in Euthenics.*

3. *That since 1983 i.e. from the date of enforcement of U.P. subordinate Education (Trained Graduate Grade) Service rule, 1983, the candidates, having graduation with Home Science as one subject, are being considered for appointment as Assistant Teacher (Home Science) in Government Colleges and till date more than thousand of candidates, having one subject as Home Science in Graduation, have been appointed and they are still working as Assistant Teacher (Home Science) in their respective colleges of State of Uttar Pradesh and State of Uttaranchal, in which some of them have already been promoted and their services are likely to be effected on the basis of order dated 21.06.2004, passed by this Court, which is not legally justified.*

4. *That, alongwith the applicants, -10- candidates were appointed as Assistant Teachers (Home Science) in Government college, situated in Kumaon Region of State of Uttaranchal, but only in respect of applicants, the orders of termination of services have been passed, whereas the persons namely Km. Kiran Verma, Km. Nirmala Tamta, Km. Manisha Verma, Km. Prabha Bhandari, Km. Rahida, Km.*

Ritu Bhatt, Km. Suman Kumari, Km. Rachna Chaudhary, Km. Sangeeta Rajput and Km. Nandini Bharti, who are having the same qualification as the applicants possesses, are still continuing as Assistant Teachers (Home Science) in their respective colleges. The respondents authorities have adopted the pick and choose method and as such the action of respondent authorities is discriminatory and in violation of Article 14 of the Constitution of India.

5. *That the applicants are directly affected by the order-dated 21.06.2004 passed by this Court, therefore, this order is liable to be reviewed by this Court.*

6. *I have perused the application supported by an affidavit and heard Shri Rajendra Dobhal, learned counsel for the applicants on the review petition.*

7. *It is being clarified that the judgment and order dated 21.06.2004 shall operate prospectively and shall not affect the appointment already made.*

8. *With the aforesaid direction, the application for review is disposed of accordingly."*

Thus, it was clarified by the learned Single Judge that order dated 21.06.2004 shall be operative prospectively and shall not effect the appointment already made. This order was passed by learned Single Judge on 14.06.2005. After passing order in the review application 14.06.2005, petitioner filed representation on 23.06.2005 before respondent with a prayer to reinstate petitioner in service, however, respondents instead of reinstating the petitioner in pursuance to the judgment and order passed by learned Single Judge in review application where it was specifically stated that judgment and order dated 21.06.2004 shall not

effect the appointment already made preferred Special Appeal No. 79 of 2005 against the order dated 14.06.2005. This Special Appeal was dismissed by the Division Bench of this High Court on 23.11.2005 . Paragraphs 2 to 4 of the judgment and order dated 23.11.2005 passed by Division Bench of this Court are quoted as under:

Para 2 to 4 of order dated 23.11.2005

"In the judgment dated 21.06.2004 certain directions were given by the learned Single Judge which had the effect of directing removal of persons who had already been appointed on the basis of the selection impugned in the writ petition. Such persons later approached the learned Single Judge through Review Application No. 19 of 2005 pointing out that before passing the judgment they were not heard and that the learned Single Judge had no opportunity to consider the facts and circumstances disclosed in the Review application. Even though the judgment as such was not reviewed, the learned Single Judge clarified that the said judgment dated 21.06.2004 shall operate only prospectively and shall not affect the appointments already made. The effect of such clarification is that the appointments made prior to the date of the judgment will not be effected by the judgment dated 21.06.2004. In other words, the review applicants who had already been appointed prior to 21.06.2004 and who filed the Review Application were entitled to continue in service on the strength of the appointment already given to them notwithstanding the termination orders issued pursuant to the judgment dated 21.06.2004. In the effect, the grievance of the review applicants was redressed by the order in the Review Application and naturally they have no further grievances. But in the mean while another set of persons have come into the picture. They are the persons who were appointed as Assistant Teachers after removing the review applicants from service

pursuant to the judgment dated 21.06.2004 and prior to the order in the Review Application. If review applicants have to be reinstated in service pursuant to the order on the Review Application, naturally the persons appointed in their place have to be sent out.

Since the appellants understood the provisions in the Rules interpreted the clause in the advertisement in such a way that the review applicants were qualified for appointment and since the appellants have not raised any contention in the appeal that the stand taken by the appellants in the writ petition was wrong, the appellants are bound to comply with the directions issued by the court. If anybody is aggrieved by the action taken by the appellants in compliance with the directions of the court, it will be open to him to seek redressal of his grievance. Hence, we decline to entertain this Special Appeal at the instance of the appellants.

For the reasons as stated above, the Special Appeal is dismissed."

This writ petition was filed by the petitioner after the dismissal of the special appeal for a direction to the respondents to reinstate the petitioner in services on the post of Assistant Teacher LT Grade (Home Science). While entertaining the writ petition, learned Single Judge of this court on 09.12.2005 directed the respondents to decide the representation of the petitioner within three weeks from the date of production of certified copy of this order. Respondents have decide the representation of the petitioner by rejecting the same vide order dated 04.03.2006 which is annexed as Annexure no. 1 to counter affidavit.

Order dated 04.03.2006 has now been challenged by the petitioner by way of amendment application.

In para 7 of the order passed by learned Single Judge while reviewing the order dated 21.06.2004 learned Single judge has held that it is clarified that judgment and order dated 21.06.2004 shall operate prospectively and shall not effect the appointments already made. In Special Appeal too Division Bench has held that even though order was not reviewed, learned Single Judge clarified that judgment and order dated 21.06.2004 shall operate prospectively and shall not effect the appointment already made. The effect of such clarification is that appointments made prior to that date of judgment will not be effected by the judgment and order dated 21.06.2004. In other words, the petitioner, who had already been appointed prior to 21.06.2004 and who filed review application, were entitled to continue in service on the strength of the appointment already given to her notwithstanding the termination order issued pursuant to the judgment and order dated 21.06.2004.

In fact, the grievance of the review applicant was redressed by the order passed in review application and naturally she has no further grievance. In spit of order passed by learned Single Judge and Division Bench of this Court respondents have passed impugned order dated 04.03.2006 rejecting the representation of the petitioner by not permitting them to continue in service on the basis of appointment given to them prior to judgment passed by learned Single Judge on 21.06.2004.

Learned counsel for the petitioner has submitted that the posts of Assistant Teacher (Home Science) LT Grade are still vacant in the State of Uttarakhand and has also filed certificate issued by Principal, Government Girls Inter

College, Paaye Garud, District-Bageshwar to the effect that post of Assistant Teacher (Home Science) LT grade are vacant in the Institution since 28.09.2005. This certificate has been issued by the Principal on 02.03.2007. It is further submitted by the petitioner that in pursuance to the advertisement on 17.06.2002 as many as 10 candidates were selected to the post of Assistant Teacher (Home Science) LT grade, however, the service of only three selected candidates namely Km. Suman, Sunita Naudiyal and the petitioner have been terminated, and in case, they are reinstated in the service in pursuance to the order passed by learned Single judge on 14.06.2005 and Division Bench on 23.11.2005 the department will have no difficulty as posts are still vacant.

For the reasons recorded above, writ petition is allowed. Order dated 04.03.2006 passed by Director, School Education, Dehradun is quashed. The respondents are directed to pass fresh order in compliance of orders 14.06.2005 and 23.11.2005 passed by this court ignoring the order dated 04.03.2006. No order as to costs.

(M.M. Ghildiyal, J)

April 10, 2007
SKSharma